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COMMISSION ON HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 April 1998, at 3 p.m.

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| Chairman: | Mr. CHOWDHURY (Vice-Chairman) | (Bangladesh) |
| later: | Mr. SELEBI (Chairman) | (South Africa) |

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In the absence of Mr. Selebi (South Africa) Mr. Chowdhury (Bangladesh), Vice-Chairman, took the Chair.

The meeting was called to order at 3.30 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1998/5, 32-35, 36/Rev.1, 37 and Add.1, 38 and Add.1 and 2, 39 and Add.1 and Add.3-5, 40 and Add.1 and 2, 41, 42, 43, 44 and Add.1 and 2, 111, 129 and 139; E/CN.4/1998/NGO/82; A/52/387)

1. Mr. AMIN (Arab Organization for Human Rights) said that he wished to draw the Commission's attention to the case of Mr. Mansour al-Kikhia, former Libyan Minister for Foreign Affairs, who had disappeared in Cairo on 10 December 1993 after being seen in the company of Mr. Yusuf Najm, also a Libyan citizen. It was regrettable that the Egyptian Ministry of the Interior had authorized the latter to leave the country when he was to have appeared before the Office of the Attorney-General, which had not even sought explanations from the Ministry in question. The only remaining hope of clearing up that disappearance lay with the Egyptian judiciary, which was hearing the complaint lodged by Mr. al-Kikhia's wife against the Egyptian Ministry of the Interior.

2. Arab public opinion was concerned about Mr. al-Kikhia's disappearance, for which the United States Government and the Egyptian Government blamed each other. It was true that the United States intelligence services were not above suspicion in that affair. Its appeals having met with no response, his organization requested the Commission to urge the authorities of the countries concerned to help it in elucidating the mystery.

3. Ms. LEE (Asian Cultural Forum on Development) said that violations of freedom of expression in the Asia and Pacific region, particularly in South Korea, Sri Lanka and Indonesia, were disquieting. It was a matter for concern that the Special Rapporteur, Mr. Abid Hussain, had been prevented by lack of resources from dealing with more than a few of the cases referred to him by NGOs from the region. She supported his recommendation that the Commission should endorse the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

4. The NGOs of the Asia and Pacific region welcomed the Special Rapporteur's recommendation to the Republic of Korea that it should repeal the National Security Law, which, as the cases of Suh Joon-sik and Lee Jang-hee showed, was giving rise not only to violations of freedom of expression, but also to arbitrary detentions. In that country, there were 17 political prisoners who had been held in detention for more than 28 years, including Mr. Woo Yong-gak, who was 70 years old. Similarly, in Indonesia and Sri Lanka, journalists had been subjected to harassment, arrest or expulsion.

5. The NGOs of the Asia and Pacific region reiterated the Special Rapporteur's appeal to all Governments to review national security laws and penal legislation that might violate freedom of opinion, expression and information. They also called on the Governments of the Democratic People's Republic of Korea and Viet Nam to invite the Special Rapporteur to visit their countries.

6. Ms. GIRMA (African Association of Education for Development) said that, for some years past, a number of NGOs had been drawing attention to the sufferings of African journalists in general, and Ethiopians in particular. The majority of the latter had undergone numerous periods of imprisonment, and some had become refugees. It was high time for the Special Rapporteur, Mr. Hussain, to visit Ethiopia, where the number of disappeared persons had increased. Arbitrary detention and torture were common practices there, and the detention and exile of prominent representatives of civil society and human rights defenders had completely destabilized the organizations concerned. Ethnic tensions were also worsening in the regions established by the Government, and threatening the peaceful coexistence which was essential in a multicultural country like Ethiopia. Unfortunately, those who, like Mr. Aberra Yemaneab, had endeavoured to promote a pluralist society were languishing in prison.

7. She also wished to mention the case of Mr. Cheheem Gidar, a refugee from Djibouti, who, while under the protection of the Office of the High Commissioner for Refugees, had disappeared after being imprisoned with a number of compatriots and returned with them by force to Djibouti. That shabby collaboration between Governments against refugees deserved the attention of the competent United Nations bodies and the Organization of African Unity. In Djibouti, where ethnic tensions were nothing new, repression had reached an unprecedented level. Political prisoners arrested by the Ethiopian authorities and imprisoned in Djibouti had even gone on hunger strike on the occasion of the meeting of the Intergovernmental Authority for Development.

8. She hoped that participants in the International Conference on Human Rights, to be held in Addis Ababa in May 1998, would bear in mind the sufferings of Ethiopians whose relatives were imprisoned, had disappeared or had been executed.

9. Ms. HAENNI (Association for the Prevention of Torture) said that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was the international human rights instrument ratified by the smallest number of States (104 out of 193), in spite of the call by the Vienna Declaration and Programme of Action for its prompt ratification by all States.

For that reason the main NGOs working against torture, including her own organization, had launched a joint campaign for the prompt and universal ratification of the Convention, and, in February 1988, they had written to each of the permanent missions of the Governments concerned in Geneva. Out of 154 States, only 2, the United Kingdom and Haiti, had replied. The organizations urged the Commission to support the campaign and to call on member States to ratify the Convention as soon as possible.

10. Her organization recommended the Commission to renew the mandates of the Special Rapporteur on torture and of the Working Group on Enforced or Involuntary Disappearances. The Commission should also encourage ad hoc visits without prior invitation by Governments or urge them to issue standing invitations. Her organization also asked the Commission to help the Special Rapporteur and the Working Group to seek the assistance of the Secretary-General and the High Commissioner for Human Rights when grave situations arose and there was repeated non-cooperation on the part of a Government.

11. She was convinced that, if there was sufficient political will on the part of the delegations participating in the drafting of the optional protocol to the Convention against Torture, the work could be completed in one further session and the draft submitted to the Commission in 1999. Her organization accordingly called on the Commission to renew the Working Group's mandate and make available the necessary resources for it to complete its task. It should meet for three weeks instead of two, and its Chairman should undertake the necessary consultations.

12. Ms. GENEFKE (International Rehabilitation Council for Torture Victims) said that torture was practised in a significant number of Member States and that, for lack of funds, millions of victims of torture were being left to their fate even though there were ways in which they could be helped. As pointed out in article 8 of the Vienna Declaration and Programme of Action, democracy, development and respect for human rights and fundamental freedoms were interdependent and mutually reinforcing, and torture was the strongest weapon against democracy. Working for the eradication of torture and the rehabilitation of victims was working for democracy. Rehabilitation was one method of preventing torture. Another was to create public awareness of the problem, to which the establishment of rehabilitation centres and programmes could contribute, but information and education also had a vital role to play. Her organization therefore welcomed the decision to proclaim 26 June as United Nations International Day in Support of Victims of Torture, and had launched a worldwide campaign to mark the day.

13. Regrettably, contributions to the Voluntary Fund for Victims of Torture had again fallen short of requirements. Too few countries were contributing, and contributions were insufficient to cover global funding needs for rehabilitation centres and programmes. There was a shortfall of $10 million to meet needs for the current year, which had been estimated at $28 million. Her organization called upon both rich and poor countries to contribute, however modestly, to the Fund, recognizing that the rehabilitation of torture victims was essential not only for the victims themselves but also for democracy.

14. Ms. ALI (Afro-Asian Peoples' Solidarity Organization) said that her organization welcomed United Nations endeavours in the area of human rights, as exemplified by the appointment of a special rapporteur on torture. Unfortunately hostage-taking, torture, arbitrary detention and involuntary disappearances had become commonplace in many areas of conflict. The example of former Yugoslavia showed that States were not alone in perpetrating such acts, responsibility for which was often borne by armed groups, as in the case of Sanjoy Ghose, killed in India by a group of militants whose representatives had come to Geneva to argue for their human rights. In Indian Kashmir, the Harkat Ul Ansar terrorist group, based in Pakistan, whose favourite technique was abduction, was operating with complete impunity. It was regrettable that the international community, and more particularly the Commission, had so far not been able to do anything to protect the lives and liberty of people held hostage by terrorists and mercenaries.

15. Thanks to the Commission's moral authority and the tireless efforts of the Special Rapporteur on torture, many States had recognized the need to amend their laws and systems of government so as to ensure that human beings did not suffer degrading punishment. Some of them had made commendable progress in that regard. Unless, however, some mechanism could be instituted to deal with the problem of armed groups, innocent human beings would continue to be their victims for a long time to come.

16. Mr. ALI KHAN (International Progress Organization) said that the Special Rapporteur on torture had given a detailed account in his report on his visit to Pakistan in 1996 of cases of illegal detention, living conditions in prisons, and forms of torture to which detainees were subjected in that country. Those phenomena were essentially bound up with the feudal structure persisting in Pakistan, which permanently relegated some classes of people to an inferior position.

17. At the time of its creation, Pakistan had been a multi-ethnic and multi-religious society. The richness of that diversity should have been a source of strength, but it had become a weakness, when the feudal elite found it to its advantage to maintain its position by playing off one community against another. At the present day the Mohajirs were on the receiving end, whereas a few years previously it had been the Sindhis, and in the 1970s the Baloch. So long as that situation continued, the evils denounced by the Special Rapporteur would persist. The fault lay not with the people of Pakistan, who only wished to live a life of peace and happiness, but with the rulers, who were unable to shake off the feudal mentality which had become more entrenched over the decades. The issues of detention and torture in Pakistan could not be studied in isolation from the structures that perpetuated the inequalities existing within the Pakistani population.

18. Ms. ATAMU (International Association Against Torture) said that the show trial conducted by the Spanish Government against members of the illegal Basque political movement Herri Batasuna clearly exemplified the existence of political prosecutions and political prisoners in so-called advanced democracies. It had been abundantly clear that the judges had decided the guilt of the defendants before the trial had commenced. The entire 23-member executive, including 7 Members of Parliament, had been sentenced to

seven years in prison for collaborating with an armed group, the ETA, because, during their electoral campaign, one member of Herri Batasuna had shown a videotape putting forward a peace proposal by the ETA. The public attack on Basque nationalists was accompanied by a clandestine government campaign of random arrests, detentions and torture of anyone thought to be associated with the ETA.

19. The hypocritical double standard on human rights was even more conspicuous in the United States, where 1 out of every 155 residents was in jail. Owing to the racist nature of the justice system, however, Blacks and Latinos made up over 50 per cent of the huge prison population. Among them were over 200 unacknowledged political prisoners, men and women who had been targeted by the FBI because of their political convictions or acts committed in accordance with those convictions. Many of them had received prison sentences twice as long as those given to non-political defendants, were left without medical treatment and were held in maximum security prisons - clear proof of the political nature of their situation. Geronimo Ji Jaga Pratt had been released after serving 27 years, but Mumia Abu-Jamal was currently on death row in Pennsylvania. Both had been members of the Black Panther party. She gave the names of other political prisoners, men and women of all nationalities and races, such as Leonard Peltier of the Native American Movement for Self-Determination and Independence, and Dylcia Pagan and Alejandrina Torres of the Puerto Rican Independence Movement. Their common characteristic was their struggle for self-determination for their people and opposition to the policies of the United States Government.

20. Believing that the Commission would not hesitate to take appropriate action if the cases cited had originated in developing countries, her organization called on it to appoint rapporteurs on the situation in the countries she had mentioned.

21. Mr. Selebi (South Africa) took the Chair.

22. Ms. FORD (December 12th Movement) said that the profit motives, which governed almost every aspect of society in the developed world, was now spreading to institutions, including prisons, the lead as usual being taken by the United States. As socio-economic conditions deteriorated, the United States Bureau of Prisons was becoming the biggest employer in the country. In mid-1997, the prison population had exceeded 1.7 million persons, or 645 per 100,000 United States residents. Those staggering figures were not unrelated to the growing privatization of the prison system. The prison industrial complex was a conglomerate of private business and government interests which, under guise of the maintenance of law and order and the prevention of crime, pursued two objects: profit and social control over a population without employment prospects and difficult to handle. The manipulation of the media and the saturation of the drug market by the CIA, together with the police-engineered proliferation of guns, had prepared the way for the criminalization of black people in general. In the 18-29 age group, one out of every three black men was under the control of the criminal justice system. Blacks, who represented 12 per cent of the United States population, made up 42.5 per cent of the prison population.

23. In United States prisons, human rights were systematically violated, in contempt of the Universal Declaration of Human Rights, of which the United States hypocritically proclaimed itself to be the guardian. Companies investing in the construction of private prisons were raking in billions of dollars by cutting corners. The unabashed pursuit of profit was resulting in sub-standard diets, extreme overcrowding and abuses by poorly trained personnel. The new prisons had, for the most part, been built in poverty-stricken white rural areas in order to resuscitate their local economies. In the early 1990s prison staff had risen by 31 per cent. The unholy alliance of transnational cooperations and the State had resulted in an abundance of work for the prisoners, from whom the maximum labour value was extracted. The key to the success of that process was the targeting and dehumanization of youth.

24. Mr. MOKBIL (War Resisters' International) said that the human rights situation in Yemen had been deteriorating since the middle of 1994. In spite of condemnations and appeals to the Government by the Human Rights Committee, Amnesty International and the European and British Parliaments, violations, particularly torture and arbitrary detention, had gone on increasing. The number of persons in illegal detention had risen from 77 to 358 from 1996 to 1997.

25. During the current session, a minister of the Yemeni Government had admitted the existence of such violations and declared his willingness to arrange for a visit to the country by the Working Group on Enforced or Involuntary Disappearances. War Resisters' International called on the Commission to consider the possibility that the Special Rapporteur on torture and the Chairman of the Working Group on Arbitrary Detention might accompany the members of the former Working Group on the visit to Yemen. It also called on the Commission to exert pressure on the Yemeni Government to fulfil its international obligations.

26. Mr. OKWUKWU (International Human Rights Law Group), also speaking on behalf of the Movement for the Survival of the Ogoni People and the Niger-Delta Human and Environmental Rescue Organization, said that those organizations were deeply concerned about the cruel and degrading treatment of prisoners in Nigeria and the breakdown of the rule of law in that country. The Special Rapporteur on the situation of human rights in Nigeria, appointed under Commission resolution 1997/53, had been refused permission to enter the country. There were currently a number of detainees, including women, held without formal charges in congested and dirty cells. They were poorly fed and denied access to family members, lawyers and doctors. Responsibility for that situation lay with the River State Internal Security Task Force, the Directorate of Military Intelligence, and the police created and maintained by various multinational corporations, particularly Shell. Detainees were denied justice by a number of obnoxious decrees nullifying the competence of the courts. Moreover, when the Government failed to find suspects, it detained members of their families. He called for the abrogation of decrees obstructing access to justice through the courts, the immediate and unconditional release of wives and other family members detained as hostages, and the release of all political prisoners, particularly the Ogoni Twenty. His organization also recommended the Commission to renew and strengthen the mandates of the Special Rapporteurs on the human rights situation in Nigeria,

on torture, and on extrajudicial, summary or arbitrary executions, and of the Working Group on Arbitrary Detention, and to secure free access for them to NGOs, political prisoners and other interested parties in Nigeria.

27. Ms. PARKER (International Educational Development) said that the United States was violating freedom of opinion and information by systematically denying visas to a number of persons on the grounds of their political convictions. A number of Cuban scholars invited by the University of California at Berkeley to a "dialogue with Cuba" and Mexican human rights specialists invited by the Los Angeles Department of Cultural Affairs to present their views on the Chiapas crisis had recently fallen victim to that policy. Her organization also protested against the harassment of members of the royal family of Hawaii by the United States police.

28. Her organization likewise condemned the expulsion from Mexico of a number of international human rights monitors and a French priest, Reverend Michel Henri, whose parish included a village where 45 Indians had been massacred in December 1997.

29. In Turkey, a Kurdish woman, Leyla Zana, and other Kurdish members of the National Assembly had been jailed for having expressed their views on the Kurdish question, and her organization called for their release. It also asked the Commission to press for the release of Ismail Beskci, who had been jailed for his writings and teachings. And it protested against the actions of the Indonesian Government, which was imprisoning Moluccans for demanding independence.

30. Ms. LAROCHE (Robert Kennedy Memorial Center for Human Rights) denounced the use of national security laws to justify violations of basic human rights, including the right to freedom of opinion and expression. In China, for example, the crime of "counter-revolutionary activity" had been replaced in March 1997 by the crime of "endangering State security". The 2,000 prisoners previously sentenced for the former crime had not, however, been released, which provided strong evidence that the purpose of the new offence was to silence dissidents. The 1988 Law on the Preservation of State Secrets was intended to serve the same purpose. It was under that Law that in December 1996 Mr. Li Hai had been sentenced to nine years' imprisonment for having collected information on people sentenced for criminal activities in June 1989, which the court had classified as "State secrets".

31. The Vietnamese Government was using national security provisions in its Constitution to arrest and prosecute members of religious communities and citizens peacefully advocating democratic reform and respect for human rights, examples being the cases of Mr. Doan Viet Hoat, Mr. Nguyen Dan Que and the journalist Hoang Linh.

32. Her organization recommended the Commission to appoint a special rapporteur on national security laws, whose mandate should include on-site investigations. The Commission should also ask its working groups and special rapporteurs to pay particular attention within their mandate to human rights violations committed under the authority of such laws.

33. Mr. RODLEY (Special Rapporteur on torture), introducing his report (E/CN.4/1998/38 and Add.1 and 2), said that chapter I dealt with various aspects of his mandate and methods of work; chapter II summarized his activities in 1997; chapter III covered information received on a country-by-country basis; and chapter IV contained his conclusions and recommendations. Adequate resources had not been available to him to deal as fully as he would have wished with the situation of human rights defenders. No special issue relating to his mandate had arisen during the year, and there had been no change in his methods of work, although continuing efforts had been made to work cooperatively with the holders of other Commission mandates with a view to avoiding duplication of activities.

34. Prospective missions for the current year included a visit to Turkey at the invitation of the Government in the second week of November, a period which he hoped could be extended since one week would be insufficient.

35. Requests made in 1997 for visits to Algeria and Egypt had met with an initial favourable response. There had been discussions with Algeria on the possibility of a joint mission with the Special Rapporteur on extrajudicial, summary or arbitrary executions, but they had not as yet resulted in an official invitation. He was currently discussing dates for his visit to Egypt with the Government.

36. He had recently had meetings with the Cameroon Minister of State for External Affairs, which had led to a verbal agreement on a visit in July or September 1998, to be confirmed by formal written invitation. Requests for visits to China, India, Indonesia and Kenya had as yet not received a positive reply.

37. Chapter III of the report should be read together with addendum 1. The chapter contained brief summaries, country by country, of the general allegations transmitted to the Governments of 72 countries, and his observations on the situations in 39 countries. The fact that no observations were made in respect of a particular country did not necessarily mean that no substantial problem existed in that country; it merely reflected the state of the information available to him.

38. In the sections on Chile, Colombia, Pakistan, the Russian Federation and Venezuela, reference was made to the follow-up to earlier missions, information on which had only been provided by Chile, the Russian Federation and Venezuela. With regard to the Russian Federation, while grateful for the reply received, he was constrained to draw attention to paragraph 170 of the report, which pointed out that the conditions of pre-trial detention remained a serious, and possibly even graver problem, than in 1994.

39. With regard to Pakistan, he noted that, in spite of the assurances he had received, it seemed that fetters were still in use in that country's prisons. In view, however, of the statement by the Minister for Foreign Affairs at the Commission's current session to the effect that the use of fetters was inconsistent with international norms, he hoped that he would be able to report at the next session that the practice had been abolished.

40. Addendum 1 contained a brief summary of government replies to allegations he had transmitted to them. Subsequently replies would be included in the report to the Commission's fifty-fifth session.

41. The conclusions and recommendations in chapter IV included the expression of his disappointment that, at the close of his first term of office, there remained a high incidence of torture in many countries. He had also emphasized the need for States to implement past recommendations and the important role that an international criminal court could play in the struggle against torture. He called on all States to ensure that their national legislation would enable them to exercise jurisdiction over alleged torturers whenever they might be found within their jurisdiction.

42. Addendum 2 contained the report on his visit to Mexico. Although cases of torture and similar ill-treatment frequently occurred in many parts of the country, the information he had received did not justify the finding that torture was systematically practised. He had made extensive recommendations, which he hoped would help the Government to ensure that its substantial array of institutional safeguards would operate effectively to prevent torture. He wished to thank the Government for its cooperation, and NGOs for their active participation. Thanks were also due to the UNDP Resident Representative and his staff in Mexico City for their invaluable support.

43. Mr. DE ICAZA (Mexico) thanked the Special Rapporteur for his very detailed report which, contrary to the relevant rule, had unfortunately been distributed only a few days previously, leaving the Mexican delegation insufficient time to study it as closely as it deserved. Accordingly, he reserved the right to forward to the Special Rapporteur his observations on the allegations in the report, and on the observations and conclusions. The report would be read with the utmost interest by the Inter-ministerial High-level Commission established in Mexico in October 1997, which was responsible for coordinating government activities relating to its international human rights commitments.

44. His Government's invitation to the Special Rapporteur to visit the country, and its cooperation with him were evidence of Mexico's determination to strengthen the rule of law and eradicate the practice of torture, which, for various historical, cultural and economic reasons, had until quite recently been endemic in the country.

45. Ever since the promulgation in 1986 of the first federal law prohibiting and punishing torture, Mexico had steadily strengthened its legislation in that field, particularly regarding the obligation upon the State to compensate the damage caused to victims. It was not, however, possible to deal with that practice by decrees alone. Above all, a culture of respect for human rights must be developed, in which regard the National Human Rights Commission, and those of the various Mexican states were playing an essential role by combating impunity and endeavouring to train members of the civil service and the judiciary to ensure full respect for human rights. With regard to the campaign against impunity in particular, it should be pointed out that, during the preceding 15 months, 1,129 officials had been punished, 244 had been prosecuted and 70 had been arrested.

46. The Special Rapporteur had noted in his report a lack of precision regarding the number of complaints of torture received by the National Human Rights Commission and the state commissions over recent years. That was possibly the case and the figures would be checked. It was, however, beyond doubt that the number of complaints was declining steadily and that torture had ceased to be the main subject of complaint. In any event, the figures showed that the practice of torture was neither general nor systematic.

47. It was true that not all those practising torture had as yet been punished, and that not all victims received compensation. The Government was in fact endeavouring to remedy that situation, and it had already succeeded in breaking the vicious circle of impunity enjoyed by torturers. The Mexican delegation thanked the Special Rapporteur for his visit to Mexico and was confident that his report would help the country to eliminate the practice of torture once and for all.

48. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that on a number of occasions in recent times attempts had been made to justify the impunity of those responsible for human rights violations by representing it as the price society had to pay in making the transition from a dictatorial regime to the rule of law. That claim failed to hide the tragic reality: society was held prisoner by torturers of the past who had become custodians of a democracy not yet achieved, in which the enjoyment of public freedoms was only possible within the limits fixed by those who, shortly before, had committed crimes against humanity. The case of General Augusto Pinochet was a dramatic illustration of the perverseness of such reasoning.

49. In Argentina, the recent decision to repeal the "clean slate" and "due obedience" laws that society had not relinquished its right to know what had happened and to bring to justice those responsible for crimes against humanity during the dictatorship.

50. Her organization drew the Commission's attention to the call to Governments in the Vienna Declaration and Programme of Action to repeal laws granting impunity to those guilty of grave offences against human rights. A meeting of independent United Nations experts should be convened to revise the draft set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/Sub.2/1997/20/Rev.1).

51. Mr. GANDARA (Asian Buddhist Conference for Peace) said that, in Rome in February 1998, Bishop Ximenes Belo, the Nobel Peace Prize winner, had publicly condemned the practice by which every month more than two dozen East Timorese children were taken from their families and handed over to families in Indonesia. He, the speaker, had himself been a victim of that practice, which was akin to enforced or involuntary disappearance. He had been 18 when members of his family had succeeded in tracing him and informed him of his true identity. He had been born in East Timor of Catholic Timorese parents and had been abducted at the age of three by Indonesian soldiers. They had handed him over to an Indonesian family who had brought him up as a Muslim. He had also discovered that his mother had been brutally murdered by Indonesian soldiers when she had been nine months pregnant, and that his father had been killed in circumstances still unknown to him.

52. At the age of 17 he had known nothing about the situation in East Timor because the Indonesian Government had not told its own subjects about the war it was waging there. When he had arrived in East Timor, he had been shocked by the poverty of the Timorese and the terror that the enormous number of Indonesian soldiers instilled in the Timorese population.

53. His story was repeating itself every day in East Timor, where the occupying Indonesian forces, not content with killing adults, even sought to deprive children of their identity. He hoped that the Commission would help to put an end to that situation.

54. Mr. PARAM CUMARASWAMY (Special Rapporteur on the independence of judges and lawyers), introducing his report (E/CN.4/1998/39), said that it contained an account of his activities over the past year and of the situation in some 30 countries where the issue of the independence of judges and lawyers had called for urgent action on his part. Brief observations were also included on responses from Governments, and a list was supplied of countries which he had asked for authorization to carry out missions. He had made a specific recommendation to the Swiss Government that it should pay adequate compensation to Mr. Clément Nwanko in order to avoid a protracted civil suit.

55. Generally speaking, he was concerned at the increasing number of complaints of government accusations of lawyers identifying themselves with their clients' causes and not complying with internationally accepted standards of due process, particularly in trials relating to terrorism. The number of countries where judges were appointed on a provisional basis was also a cause of concern, as were the difficulties faced by countries in transition in providing an independent and impartial justice system because of a lack of financial and human resources.

56. Referring to addendum 1 of his report on the situation in Peru, which he had visited from 9 to 15 September 1996, he said he had been pleased to learn that the "faceless" tribunals had been abolished, but regretted that the practice was still in use in military courts. He was obliged to draw attention to a matter of grave concern: the transfer to the Executive Commission of the Judiciary of the constitutional powers of the National Council of the Magistracy to select, appoint and remove judges. According to recent information, the seven members of the National Council of the Magistracy had resigned en bloc in protest against that situation. The manner in which three judges of the Constitutional Court had been removed by Congress was also extremely disturbing.

57. Addendum 2 on Colombia was not yet available, but the situation could be summed up in the words of the very high personages whom he had met during his mission from 15 to 27 September 1996: the rule of law was dead. Although the Government had set a date for the abolition of "faceless" tribunals used to try terrorist-related crimes, his view was that they should be abolished forthwith. He reiterated the recommendations of the Human Rights Committee and the Special Rapporteurs on torture and extrajudicial executions regarding the administration of justice in Colombia.

58. His report on Belgium (E/CN.4/1998/39/Add.3) was a preliminary one owing to the reforms of the judicial system taking place in that country. His interest in the situation in Belgium had been triggered by the massive public demonstrations that had followed the removal of the magistrate investigating a case of child prostitution, kidnapping and murder. In his report he expressed the opinion that the measure taken by the Court of Cassation in that case, although unpopular, had been in accordance with the standards guaranteeing the independence and impartiality of the judiciary. The Belgian Government had taken note of his recommendations concerning the need to observe those standards in any reform of the judicial system. A large number of magistrates, including the President of the Court of Cassation and prosecutors, had expressed their concern about the proposed reforms during his mission to the country. The historic gathering in Brussels of some 1,300 magistrates on 21 March 1998 demonstrated their solidarity in protecting judicial independence. For the first time in the history of Belgium, the judges themselves were frankly recognizing the strengths and weaknesses of the Belgian judicial system.

59. His visit to Northern Ireland from 20 to 31 October 1997 had been in response to allegations by NGOs, in particular British Irish Watch and the Lawyers' Committee for Human Rights, concerning the intimidation and harassment of defence lawyers in Northern Ireland. His report in addendum 4 bore out those allegations, in spite of denials by the Royal Ulster Constabulary (RUC). The crisis of confidence in that body's investigative procedures had led the Hayes Commission to recommend the appointment of an independent ombudsman to investigate complaints against the police. He had himself expressed concern over the failure of the Law Society of Northern Ireland, set up to protect defence lawyers from vexatious or intimidatory acts, to perform that function. Even if they had no confidence in the investigative mechanisms of the police, the lawyers should at least have submitted their complaints to the RUC. By failing to do so, they furnished it with an argument in its defence.

60. He welcomed the Government's proposed introduction of video recording of interrogations in holding centres, and was also pleased to note that the Law Society had taken steps to play a more active role in defending the independence of lawyers.

61. With regard to the case of Patrick Finnucane, a distinguished Belfast lawyer who had been murdered with the alleged complicity of the security forces, he was convinced of the need for an independent judicial inquiry. It was essential to determine whether there had been police collusion in the murder. He was also convinced that there should be greater transparency and accountability in public institutions in order to enhance the prospect of a settlement of the conflict in Northern Ireland, at a time when the peace talks were at a crucial stage.

62. Addendum 5 contained a few observations on the refusal by the Malaysian Federal Court on 19 February 1998 to grant him leave to appeal to it from the decision of the Court of Appeal, which had earlier dismissed his appeal. He wished to say no more at the current stage.

63. He thanked the Governments of the four countries mentioned - Peru, Colombia, Belgium and the United Kingdom - for their full cooperation.

64. Mr. BRODY (Human Rights Watch) said that his organization had welcomed the visit of the Working Group on Arbitrary Detention to China and Tibet in the preceding October, and its sharp criticism of imprecise offences under Chinese criminal law, particularly the failure to define offences "endangering national security".

65. The Working Group's report failed, however, to address several key issues: the lack of independence of the Chinese judicial system; violations of international law in regard to the presumption of innocence; use of illegally gathered evidence; trial procedures weighted in favour of the State; and the use of administrative penalties, especially re-education in labour camps. In China, any manifestation of political or religious dissent and any peaceful petition was considered anti-social behaviour and incurred sentences that were rarely overturned on appeal. His organization strongly disagreed with the Working Group's view that the sanction of re-education in a working camp was consistent with international standards so long as the sentence was delivered by an independent judge or court. The Working Group should have called for the abolition of that type of penalty. Chinese citizens should enjoy the protection of criminal procedure law and the Criminal Code whenever they were at risk of losing their liberty.

66. The Working Group had made no mention of the incident that had occurred in Drapchi prison during its visit to Tibet, when a detainee had openly declared his support for the Dalai Lama. According to subsequent reports, those involved had been interrogated, beaten and put into solitary confinement after the delegation had left. That the group should have been satisfied by assurances from the Chinese authorities that no prisoners would be harmed was alarming. In general, his organization found the Working Group's recommendations disappointingly weak and vague. In September 1996, while it had been negotiating the terms of its visit, the Working Group had stopped receiving or transmitting allegations of arbitrary detention of Chinese citizens. That suspension of activities which formed an integral part of its mandate was extremely disturbing. Governments which invited visits by Commission mechanisms did not thereby render themselves temporarily immune to scrutiny.

67. Ms. GOWYAN (Amnesty International) said that her organization welcomed the report by the Special Rapporteur on the independence of judges and lawyers on his mission to the United Kingdom in October 1997. It rightly stressed the lack of safeguards for suspects arrested under emergency legislation in Northern Ireland, their ill-treatment in detention centres and the harassment and intimidation, including death threats, to which their lawyers were subjected by the police. The killing of a prominent defence lawyer, Patrick Finnucane, in 1989 highlighted the extent of such practices. No one had so far been brought to justice. There were strong grounds for thinking that there had been collusion between the security forces and loyalist paramilitary groups. Amnesty International called for an independent and thorough judicial inquiry into that murder. An essential safeguard for the protection of suspects, that they be interrogated in the presence of their lawyers, should be introduced immediately. For many years his organization

had drawn attention to abuses committed in police premises; it therefore welcomed the decision to instal video recording facilities in those premises. Audio recording systems should, however, also be installed in order to ensure that abuses were detected. The United Kingdom Government should also end its derogation of the relevant provisions of the International Covenant on Civil and Political Rights, and make provision for prompt judicial scrutiny of detentions. Her organization also urged the United Kingdom Government to comply with the recommendations of the Special Rapporteur on the independence of judges and lawyers.

68. Ms. LAUWEREINS (France-Libertés) said that she wished to draw the Commission's attention to the case of Mauritania, where the authorities were violating freedom of expression, as instanced by the arrest of Mr. Kamara and Mrs. Fatima Mbaye, President and Vice-President of the Mauritanian Human Rights Association, of Mr. Ould Messaoud, President of the Association S.O.S. Esclaves, and of Mr. Ould Ebetty, Secretary-General of the National Lawyers' Association. Freedom of expression was guaranteed under the Constitution of Mauritania, which had also ratified the African Charter of Human and Peoples' Rights in 1986.

69. With regard to Ethiopia, she recalled the case of Mr. Aberra Yemanab, who had been imprisoned in his country to which he had returned after 15 years in exile, and had not yet been released. The Ethiopian Government had also forcibly returned 18 opponents of the Djibouti Government to their country, where they had been imprisoned on arrival.

70. Her organization also wished to refer to the large number of prisoners of conscience, including several journalists, imprisoned in Nigeria, and called particular attention to the case of Christina Anyanwu, who had been imprisoned since 1997.

71. With reference to the tragic situation of persons imprisoned in Bahrain under the State Security Act, she recalled that, in his 1995 report, the Special Rapporteur had said that the situation of persons subjected to any form of detention or imprisonment was often linked to the proclamation of a state of emergency, accompanied by the mass resignation of magistrates and the establishment of special courts. The Commission should therefore condemn Bahrain as firmly as possible and call upon it to demonstrate its willingness to end its violations of human rights.

72. She had been greatly concerned about the situation of women in Kabul since the seizure of power by the Taliban. Pressure should be brought to bear on the authorities in Afghanistan to put an end to the cruel, inhuman and degrading treatment to which Afghan women were being subjected.

73. Mr. FUKUMA (International Association of Democratic Jurists) said that the Japanese courts were not independent, particularly those dealing with complaints of wrongful dismissal. Mr. Hideyuki Tanaka had been dismissed by the Hitachi company, a leading Japanese manufacturer of electrical equipment, for refusing to work overtime. The Japanese Government had not yet ratified any of the ILO Conventions on working hours, with the consequence that death from overwork was a frequent occurrence in the country. In the case of Mr. Tanaka and several other workers also dismissed for refusing to work

overtime, the Supreme Court had confirmed the decision of a lower court that companies were entitled to dismiss their workers for such refusals. The Supreme Court had in fact established a system that enabled it to influence the decisions of judges in such cases. His Association regarded such a situation as an absolute violation of the independence of judges.

74. Mr. AL-MUSIBLI (Observer for Yemen), speaking in exercise of the right of reply, said that he wished to rebut the baseless allegations made by the NGO calling itself War Resisters' International, about the human rights situation in Yemen. Behind those accusations lay political motives. He invited the members of the organization to visit Yemen. They would find that it had a human rights commission which coordinated its activities with the corresponding United Nations bodies, and that it had chosen the democratic path, thereby guaranteeing its citizens freedom of expression and the exercise of fundamental rights.

75. Mr. TAREK ADEL (Observer for Egypt), speaking in exercise of the right of reply, said that contrary to the allegations of the Arab Organization for Human Rights, his Government had instituted thorough inquiries into the disappearance of Mr. Mansour al-Kikhia. The fact that the principal witness in the case, Mr. Yusuf Najm, had been able to leave the country without being heard showed that there was total freedom of movement in Egypt.

The meeting rose at 6 p.m.